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Fact or faction: The SBOE's role in textbook adoption

Recent controversy over the adoption of science textbooks for Texas public schools has focused renewed attention on the State Board of Education (SBOE) and its role in selecting textbooks.

Before 1995, the Education Code gave the SBOE wide latitude to determine which textbooks were most acceptable for use in the schools. However, controversies arose repeatedly when the board wielded such authority. Past disputes included the treatment of evolution and of certain historical events, the content of books that discussed sex education, controversial stories in literature anthologies, and the inclusion of certain words in dictionaries. Since 1995, when the 74th Legislature restricted the board's powers regarding textbook adoption, the debate has shifted toward identification of factual errors. However, some observers say that textbook selection in Texas remains a highly contentious political process.

Because Texas adopts textbooks for statewide use, the state is one of the nation's largest purchasers of textbooks. For fiscal 2002-03, state lawmakers appropriated \$570 million for textbooks, up from \$471 million in fiscal 2000-01. California and Florida also use central adoption methods. Due to their sheer volume of purchasing, these three states hold significant sway over the content of textbooks. Generally, publishers say it is uneconomical for them to create separate versions of a textbook for the "big three" states and for other states. As a result, the Texas, California, or Florida version of a book usually is the version published nationally.

The extent of the SBOE's future control over textbook adoption could depend on decisions by the Legislature, the attorney general, or Texas voters.

Created in the 1866 Texas Constitution, the SBOE has been revamped many times. Besides adopting textbooks and the state curriculum, the board's primary responsibility is to

oversee the \$18.6 billion Permanent School Fund. The 15 SBOE members are elected statewide from single-member districts.

Some advocate retaining or strengthening the SBOE's authority over textbook selection, while others say the Legislature should curtail or remove this authority. The extent of the board's future control over textbook adoption could depend on decisions by the Legislature, which could increase or reduce the board's powers in statute; by the attorney general, who could issue a new opinion interpreting current statutory authority; or by Texas voters, who could alter the composition of the board in the upcoming elections.

For an overview of the SBOE's history and current structure, its constitutional and statutory authority, and controversies surrounding board actions in recent years, see *State Board of Education: Controversy and Change*, House Research Organization Focus Report No. 76-19, January 3, 2000.

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The textbook approval process

Education Code, chapter 31 sets forth guidelines for adopting and purchasing public school textbooks. The law requires that textbooks be furnished to all public and open-enrollment charter school students at no charge to the students. For each subject in the required curriculum, the SBOE must establish a review and adoption cycle for textbooks from prekindergarten through secondary grade levels.

Each year, Texas Education Agency (TEA) staff examines existing textbooks for content issues that may need updating. Education Code, sec. 31.022 requires a full investigation of every textbook in the foundation curriculum at least every six years. In practice, the six-year contracts with publishers normally are extended for two years, resulting in an actual investigation and adoption cycle of eight years.

At least 24 months before the scheduled adoption of new instructional materials, the SBOE issues a proclamation calling for bids. Texas Administrative Code (TAC), sec. 66.27 prescribes the content of the

proclamation, which is drafted by TEA. For example, for the upcoming cycle of adoption of instructional materials for social studies textbooks, the education commissioner presented a draft proclamation at the November 1999 SBOE meeting. In March 2000, the board issued its official Proclamation 2000, giving publishers until December 2001 to file statements of intent to bid. Publishers have until the spring of 2002 to submit textbooks for review.

TAC, sec. 66.33, requires the commissioner to determine the number of review panels needed to review instructional materials being considered for adoption, the number of reviewers on each panel, and the criteria for selecting panel members. This

summer, a panel of reviewers, primarily teachers nominated by local school districts and appointed by the commissioner with SBOE consent, will check the submitted social studies textbooks for compliance with the Texas Essential Knowledge and Skills (TEKS) standards and will identify errors. After

publishers submit new content in response to the first review, selected panel members will review the new content for TEKS coverage. TEA also may hire independent fact checkers such as university faculty to review for errors.

At public hearings in September, members of the public also may identify content and factual errors. The board will consider a motion at its March 2002 meeting to move up the public hearings to July so that publishers will have more time to respond to public comments before the board votes on a final slate of social studies textbooks in November 2002 for use beginning in the 2003-04 school year.

Publishers may participate in a due-process hearing when material in submitted textbooks is disputed. A publisher that disagrees with an allegation of factual error can explain its disagreement in a "show cause" hearing before the commissioner. If a publisher agrees to make a change, that agreement is noted in the commissioner's report to the SBOE, which is not bound to adopt the commissioner's recommendations. Between the November adoption of the textbook and the following May, the publisher must make those corrections. When textbooks are shipped to the schools,

TEA reviews each book to see if such factual errors have been amended. If not, an action is brought before the SBOE to assess a penalty.

After a review is complete, the SBOE places a textbook on either a “conforming” or “nonconforming” list or else rejects a textbook submitted for those lists. Under Education Code, sec. 31.023, a book on the conforming list must meet physical specifications, meet each element in the TEKS curriculum for that grade and subject, and be free of factual errors. Books on the nonconforming list must meet physical specifications and be free of factual errors, but they need only meet at least half of the elements of the TEKS for the subject and grade level.

School districts may obtain books on either the conforming or nonconforming lists at state expense. They also may purchase books not on either list, but the state will pay for no more than 70 percent of the cost of such books. As a practical matter, districts generally obtain only books on the conforming list because those books meet all of the curriculum objectives that form the basis of the TAAS exam given to all students in grades 3-8.

The 1995 rewrite of the Education Code, enacted as SB 1 by Ratliff/Sadler, made comprehensive changes to the public education system. Among other changes, SB 1 curtailed many of the SBOE’s powers regarding textbook adoption. As introduced, SB 1 would have eliminated the board’s authority to select textbooks. The Senate amended the bill to require the board to approve textbooks that cover “each element of the essential knowledge and skills of the subject and grade level” and are “free from factual errors” (Education Code, sec. 31.023). In general, supporters of that change maintained that it would give local districts greater freedom to choose from a wider array of acceptable texts. While some argued that the state should have relinquished all authority over textbooks, others said that because textbooks are purchased with state dollars, the state has a responsibility to ensure that textbooks not only are accurate but also contain materials required by the state-mandated curriculum.

California’s State Board of Education sets educational policy in the areas of standards, curriculum, and instructional materials and assessment, and it adopts textbooks for use in grades K-8. The board comprises 11 members appointed by the governor. Board members

serve a four-year term, except for one student member who serves a one-year term. In Florida, the Department of Education outlines courses and standards and publishes textbook specifications for selected subject areas. The State Instructional Materials Committee reviews the submitted textbooks, and the education commissioner formally adopts materials recommended by the committee. The commissioner appoints the 10-member committee from a slate of nominations by district school officials, professional and educational associations, and civic organizations. In both California and Florida, local schools purchase textbooks through a central state depository.

Attorney general’s opinion. Within one year of the 1995 legislative session, the SBOE tested the limits of SB 1. In July 1996, the board narrowly adopted a rule requiring textbooks to adhere to certain general content requirements and limitations as a condition of board approval. The proposed rule was contingent upon a determination by the attorney general that it fell within the board’s rulemaking authority.

Some board members asserted that the SBOE should have authority to review textbooks for objectionable content, while others said such review would revive charges of censorship that led to curtailment of the SBOE’s authority over textbook selection. Mike Moses, then education commissioner, and Jack Christie, then SBOE chairman, asked Attorney General Dan Morales for his opinion as to whether the board had acted within its authority in adopting the rule.

Morales concluded that the board had no authority to adopt a rule prescribing textbook content ([Opinion DM-424](#), November 1996). He cited the Texas Constitution, Art. 7, sec. 8, which assigns to the SBOE “such duties as may be prescribed by law,” and Education Code, sec. 7.102, which outlines the board’s powers and duties. Invoking the principle of local control, Morales determined that school districts and open-enrollment charter schools may perform any “educational function not specifically delegated to [TEA] or the board.”

According to Morales, the board’s proposed rule would have imposed “additional burdens, conditions, or restrictions in excess of or inconsistent with relevant statutory provisions.” While Education Code,

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Textbook Selection: A Question of Authority

Beyond the debate over factual errors in textbooks, many observers say the larger issue concerns the State Board of Education's (SBOE) role in approving textbooks. Legislative restrictions on the board's authority in this area have frustrated some board members, who say that "half measures" have undermined their ability to represent constituents' interests. Critics, however, accuse the board of abusing its existing authority, and they urge lawmakers to remove the board from the process of adopting textbooks.

Supporters of the SBOE's role say:

The SBOE should maintain control over the content of textbooks to ensure that public school students receive an education based on the essential knowledge and skills developed by the board and approved by the Legislature. Education Code, sec. 28.002(h) directs the SBOE to adopt textbooks that promote the free enterprise system and that give students an "appreciation for the basic democratic values of our state and national heritage," and the board should have the authority necessary to implement those standards.

Because the SBOE developed the curriculum standards, the Legislature should authorize the board to reject textbooks that include material not germane to the Texas Essential Knowledge and Skills (TEKS). For example, in the science textbook debate, the rejected textbook stated that environmental laws should be governed by the United Nations. That kind of advocacy is not part of the TEKS, nor does it agree with the principles set forth in the Education Code. School districts need choices, but board-approved textbooks must conform to the curriculum.

Texas Administrative Code, sec. 66.27(d) allows the board, under extraordinary circumstances, to adopt an emergency, supplementary, or revised proclamation calling for new instructional materials without complying with timelines or other requirements. The prospect of adopting a slate of unsuitable books creates an extraordinary circumstance that justifies the board in imposing additional requirements on publishers.

Granting the elected board more authority would enhance public participation in textbook review. Movements in other states to replace elected boards with political appointees have damaged the quality of

schools by taking the public out of public education. Publishers agree that corrections submitted by public reviewers and approved by SBOE members have improved the quality of science textbooks. TEA and the nominated panels of school teachers have not done an adequate job of reviewing textbooks for factual errors and compliance with the TEKS.

Lawmakers should restore the SBOE's power to select the education commissioner. When the board was appointed by the governor between 1984 and 1988, it had this power, subject to gubernatorial and legislative approval. As it is, the board must answer to constituents for decisions made by a commissioner who ultimately is accountable to the governor, not to the public. This power imbalance undermines board authority over textbook adoption, most notably in the selection and approval of textbook review panelists.

Board members need not refrain from textbook oversight because of their financial interests. A seat on the board is an unpaid elected position, and everyone has to make a living. Many legislators also have financial interests, yet they do not abstain from voting on issues that may affect them. The board has rejected only one book in the past six years, so it is unfair to assert that some books hold an advantage because of the identity of the underwriter.

Textbook publishers will not pull out of the Texas market if the SBOE exercises greater authority over textbook content, because they cannot afford to lose the business of a major adoption state. At its March 2002 meeting, the board will consider holding the public hearing portion of the review cycle in July, rather than September, to give publishers more time to respond to requested changes before the board adopts the final slate of textbooks in November.

Opponents of the SBOE's role say:

The Legislature should remove the SBOE's authority to select textbooks, as proposed in the filed version of SB 1 by Ratliff in 1995. The board is flouting legislative intent by rejecting textbooks for reasons other than those that the law recognizes.

The board oversteps its authority when it tries to rewrite textbooks. Current law limits the board's authority to issues of factual correctness, compliance with the TEKS, and physical standards. If all textbooks are rewritten according to the board's philosophy's and opinions, all books will begin to look the same. Different textbooks provide different perspectives for a reason, and school districts need to have flexibility and choices to meet local needs and circumstances, as intended by SB 1.

Advocates of increasing the SBOE's authority over textbook selection misinterpret legislative intent when they invoke Texas Administrative Code, sec. 66.27(d), which allows the board under extraordinary circumstances to issue a new textbook proclamation without complying with timeline requirements. The only "extraordinary circumstance" under which the board could adopt an emergency, supplementary, or revised proclamation would be if a new textbook were needed to respond to extraordinary changes in the world — for example, if government or history students needed new materials dealing with terrorism as a result of the September 11 attacks. A "slate of unsuitable books," judged so only for ideological reasons, does not constitute a reason to impose additional, burdensome costs on publishers.

The education commissioner should decide which textbooks go on the conforming and nonconforming lists after review by neutral parties such as TEA staff and university faculty. TEA staff had recommended placing the recently rejected science textbook on the

nonconforming list of books available for purchase by school districts. The commissioner approved this recommendation after a thorough review by Texas A&M faculty. The commissioner is appointed by the governor and is accountable to the Legislature, which sets educational standards for the state.

Ultimately, local school districts should decide which textbooks to adopt. Limiting a school district's choices to textbooks deemed politically correct by the SBOE not only keeps important information out of the classroom but subverts the legislative intent of local control. During the process of drafting SB 1 in 1995, legislators discussed the possibility of authorizing "free market" textbook adoption, rather than central adoption. A free market system would allow local school districts to adopt textbooks directly, according to their individual needs. The Legislature may need to revisit that concept.

Some SBOE members are acting from their own financial interests in the oil and gas industry when they advocate the inclusion or omission of certain material. Furthermore, the board's approval of a high school environmental science textbook underwritten by the mining industry shows that the board is more likely to approve books aligned with such industries.

If SBOE continues to reject textbooks or censor them for trivial reasons, publishers will pull out of the Texas market for public school textbooks. Last-minute changes to textbooks are expensive, and the board's demands are especially unfair to small publishers who are making every effort to follow the rules. Only about five major publishers now can afford to compete in the Texas market. This leaves school districts with fewer choices among instructional materials.

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sec. 28.002 directs the board to identify essential knowledge and skills in support of each subject in the curriculum, Morales said, "it does not confer any additional power to the board with respect to textbook

adoption" beyond the authority to review physical specifications, essential knowledge and skill elements, and factual errors.

Critics of Morales' decision cite Education Code, sec. 28.002(h), which states:

The State Board of Education and each school district shall foster the continuation of the tradition of teaching United States and Texas history and the free enterprise system in regular subject matter and in reading courses and in the adoption of textbooks. A primary purpose of the public school curriculum is to prepare thoughtful, active citizens who understand the importance of patriotism and can function productively in a free enterprise society with appreciation for the basic democratic values of our state and national heritage.

Morales argued that the statute does not define the term “foster” nor the manner in which school districts must implement this provision. The words “primary purpose,” he said, do not create a mandate for the SBOE to censor content during textbook selection. Because the attorney general determined that the board had not acted within its authority, the proposed rule never took effect.

Recent textbook controversies

The SBOE influences textbook content indirectly by embedding certain requirements in the state curriculum. The board adopted the TEKS curriculum in 1997 (TAC, Title 19, chapters 110-128), and it took effect September 1, 1998. During a contentious three-year development process, the board and the public raised many objections to the original draft, and the board modified curriculum standards significantly. Eventually the board adopted the curriculum, but not before being accused of stifling public discussion with procedural tactics. After the vote, several board members threatened to seek injunctions to block implementation of the curriculum, but they never did so. (For additional background, see *Texas Redefines the Three R's: The New Public School Curriculum*, House Research Organization Focus Report No. 75-19, October 7, 1997.)

Phonics. The battle over phonics is an example of a hotly debated curriculum issue that ultimately affected the content of public school textbooks.

Phonics-based instruction teaches reading and writing by breaking down words to their component sounds, in contrast to the “whole language” method of teaching, which encourages students to learn the meaning of words from contextual clues in the sentence or paragraph. Experts differ on which approach or mixture of approaches is the best way to teach reading.

During 2000, concerns about the level of phonics-based instruction required by the TEKS led the SBOE to require several textbook publishers to add to or rewrite their first-grade reading textbooks to qualify them for the conforming list. Controversy arose over the interpretation of an element of the curriculum requiring that students be able to “use letter-sound knowledge to read decodable texts (engaging and coherent texts in which most of the words are comprised of an accumulating sequence of their letter-sound correspondences being taught).” Publishers asked TEA staff to clarify what “most” meant, and the staff responded that at least 51 percent of the words in the text selections must be decodable. However, when the SBOE later reviewed the books, the board determined that the standard required that at least 80 percent of the words be decodable. Textbook publishers worked out agreements with the board to supplement their texts with additional passages to meet this standard at no extra cost to the state.

Critics of the board suggested that this incident demonstrated that the board had set out to judge the content of textbooks, even though content is not supposed to be a criterion for accepting or rejecting texts. Board members argued that the 80 percent standard was needed to make textbooks conform with the essential elements and skills of the curriculum adopted in 1997. They also said that scientific evidence showed that meeting the goals of Gov. George W. Bush’s reading initiative — enabling children to read on grade level by third grade — required that early reading books contain a majority of decodable words.

Science textbooks. At the heart of the debate over the SBOE’s role in textbook selection is the

The battle over phonics is an example of a hotly debated curriculum issue that ultimately affected the content of public school textbooks.

definition of factual error. People on both sides of the issue say that facts can be presented in a way that encourages bias, and concerns have arisen over the inclusion or omission of facts that tend to support one viewpoint over another.

In November 2001, the SBOE completed a cycle of review and adoption of science textbooks. The process featured complaints against publishers, SBOE members, and university reviewers and fueled debate over the board's authority to require certain changes of publishers.

In advance of public hearings held in September 2001, a panel of more than 100 reviewers checked the science textbooks for compliance with TEKS standards. Also, TEA awarded an \$80,000 contract to science faculty at Texas A&M University to check the accuracy of proposed textbooks. Texas A&M faculty reviewed textbooks, CD-ROMs, videotapes, and other supporting materials in science (grades 6, 7, and 8), physics, chemistry, astronomy, environmental systems, and the new integrated physics and chemistry textbooks required of all students by the latest curriculum enhancements. Faculty also reviewed advanced-placement chemistry, physics, and environmental science textbooks — designed to enable high school students to take college-level courses and possibly earn first-year college credit while in high school — and textbooks for international baccalaureate (IB) chemistry, physics, and environmental systems. The IB diploma program, a comprehensive two-year curriculum, is designed for internationally mobile students who need to transfer credits when moving from one country to another.

Some Texas A&M fact checkers focused on accuracy, while others focused on whether the books addressed essential knowledge and skills. Reviewers found more than 1,300 factual errors, as well as hundreds of spelling and grammar errors.

During public hearings, the greatest controversy arose over an advanced-placement environmental science book, *Environmental Science: Creating a Sustainable Future* by Daniel Chiras, published by Jones and Bartlett. In a 10-5 vote along party lines, the board rejected this textbook and adopted six

others on condition that the publishers make certain changes. All publishers except for Jones and Bartlett agreed to make most of the changes requested by the SBOE. Publishers withdrew two textbooks voluntarily.

Supporters of the board's decisions said the board is responsible for ensuring that public school textbooks present information that is error-free and comprehensive in coverage. They said that in addition to containing some egregious factual errors, the rejected environmental science textbook was one-sided in discussing issues that remain contentious within the scientific community, such as acid rain, deforestation, global warming, overpopulation, and sustainable

development. Many statements in the textbook reflected an activist environmental agenda, and practice exercises suggested that students become activists for various liberal causes. Board supporters said that science books either should omit alarmist statements or should add countering facts about the economic benefits of U.S. policies that support traditional farming practices, the use of fossil fuels, and so on. Finally, they said that board members did not harm the majority of Texas students by rejecting the advanced-placement environmental science textbook, a college-level textbook with a market of only about 30,000 students, because school districts still could purchase the book at their own expense.

Opponents accused board members of exercising censorship for ideological reasons rather than to correct factual errors. They said the board has no mandate to ensure "comprehensive coverage" of all issues, only to ensure coverage of the TEKS, and that the board's assertion of authority over depth of coverage was a backdoor effort to define an omission as a factual error and thus to control textbook content. Excluding material about global warming, deforestation, and acid rain, they said, robs students of valid scientific information on issues that no longer are considered controversial by any but the most extreme fringe communities. Texas is part of a global community, and eliminating material from textbooks because it might make Texas industries "look bad" puts Texas students at an academic disadvantage. Finally, opponents said that the board's rejection of the only advanced-placement environmental science textbook under

The latest cycle of review and adoption of science textbooks fueled debate over the board's authority to require certain changes of publishers.

consideration would prolong the use of outdated materials in the classroom and would deprive students of cutting-edge instructional materials in a rapidly advancing field of scientific study.

Because most publishers agreed to make the requested changes, no legal challenge arose. However, in future cycles, a legal question could arise as to whether the definition of “factual error” should include omissions as well as factual misstatements.

What’s next?

In December 2001, publishers submitted statements of intent to bid on the next textbook adoption cycle, which will review social studies texts for elementary and middle schools and U.S. history and government, world history, world geography, psychology, sociology, and economics texts for high schools.

At its September 2001 meeting, the SBOE approved two new advanced-placement courses for

human geography and world history. The board also extended from February 4 to April 26, 2002, the deadline for publishers to submit sample copies of instructional materials for review. The latter move was intended to help publishers whose operations were affected by the September 11 terrorist attacks and to accommodate content revisions related to the attacks.

Social studies textbooks were the focus of intense debate in 1995 and 1996, the last time they underwent a cycle of review. Issues that arose then included the representation of minorities in textbooks, whether elementary school textbooks should discuss George Washington’s religious beliefs, and whether historical timelines should include the birth of Jesus Christ.

History textbooks are likely to be a particularly sensitive issue during the next adoption cycle. In discussing the political ramifications of developing a history curriculum, a writer for the *New York Times* cited a slogan from George Orwell’s *1984*: “Who controls the past controls the future.”

— by *Dana Jepson*

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